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VOLUME IV

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

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San Antonio, Texas
November 22nd, 1928.

San Antonio Typographical Union No. 172,
Light Publishing Company,
Express Publi[illegible]ng Company.

We, the und[illegible]ned members of the arbitration board have reached a decision that the following contract shall be effective as between the San Antonio Typographical Union No. 172 and the Express Publishing Company and the Light Publishing Company effective from the date provided in said contract to and including the expiration therein set forth.

For the Publishers (Wm. McIntosh
(
(Frank G. Huntress

For the Union (Geo. V. Schmitz
(
(O. W. Atterbury
Arbitration Board.

CONTRACT OF WAGES, HOURS, AND WORKING CONDITIONS Between Express Publishing Company, publishers of the San Antonio Express and San Antonio Evening News, and the Light Publishing Company, publishers of the San Antonio Light; and the San Antonio Typographical Union No. 172, a subordinate of the International Typographical Union of North America.

Section 1. This contract, made and entered into this 22nd day of November, 1928, by and between the Express Publishing Company, publishers of the San Antonio Express and the San Antonio Evening News, and the Light Publishing Company, publishers of the San Antonio Light, party of the first part, and the San Antonio Typographical

Union No. 172, a subordinate of the International Typographical Union of North America, party of the second part, by the authorized representatives of the said Express Publishing Company and the Light Publishing Company, and the authorized representatives of the said Typographical Union.

Section 2. WITNESSETH: that from and after the 1st day of December 1928, and until the 31st day of July, 1933, and continuing thereafter until a new agreement shall have been made, the party of the first part binds itself to the employment in its composing room of members of the International Typographical Union. This shall include foremen, floor men, make-up men, proof readers, machinists, operators of type and line-setting and casting machines (not including pot feeders, wipers of said machines or boys employed to proof galleys).

Section 3. It is understood and agreed that all of the terms and conditions set forth in this contract shall, unless otherwise mutually agreed, remain effective and binding on the parties hereto until the expiration of this contract on the 31st day of July, 1933, except that the hours and rate of pay provided in this contract may be changed by negotiation between the parties to the contract, provided notice in writing is given by the party desiring the change to the other party to the contract at least sixty (60) days prior to the 1st day of August of any year during the term of this contract, and should no such notice be given, the rate of pay and hours shall remain as provided herein during the full term of the contract. Should the parties fail to reach an agreement as to a change of wages or hours proposed by either party, the matter shall be settled by arbitration in accordance with the arbitration clause of this contract.

Section 4. It is understood and agreed that should either party to this agreement desire a change in any of its provisions at its expiration, notice in writing shall be given to the other party to the contract at least thirty (30) days before its expiration, and should no such notice be given this contract shall remain in force and be binding on both parties for twelve (12) months after its expiration and the same provisions shall apply at the expiration of each year thereafter.

Section 5. It is understood and agreed that this contract contains all of the provisions and conditions concerning the relations between the parties hereto, and any laws or rules by either party affecting the other may become effective only by mutual consent during the life of this contract.

Section 6. The party of the first part is guaranteed under this contract against any strike or boycott on the part of the party of the second part, and against the encouragement, directly or indirectly, of any strike or boycott against the party of the first part, and party of the second part is guaranteed against lock out on the part of the publishers during the life of this contract, and it is mutually agreed that the validity of this contract shall not be dependent upon or affected by the obligations of either party to any other person or organization not a party to this contract.

Section 7. The publisher, through the foreman, shall select and employ all the help, and supervise and control all employees in the composing room, and journeymen and apprentices shall perform such work as he may direct. He may discharge (1) for incompetency, (2) for neglect of duty, (3) for violation of office rules, which must be conspicuously posted, and (4) to decrease the force; all persons

discharged under Clause 4, however, shall be reinstated in the reverse order from which they were laid off whenever the force is again increased. No man who has been discharged from the office shall be eligible to "sub" except by permission of the foreman. No man shall be allowed to leave the office or his work during working hours, except by permission of the foreman. It is agreed that the publisher, through the foreman, shall determine the number of men necessary for the conduct of their business, or to perform any work, or to operate any and all machines in the composition department.

Section 8. It is hereby mutually agreed that any question arising regarding the interpretation of the provisions of this contract, or any question that may arise as to a change of the wage scale or hours of this contract, or any question that may arise as to the provisions of a renewal of this contract, that cannot be settled by mutual agreement between the parties hereto within thirty (30) days from the time the question arises, shall be settled by arbitration. For this purpose an arbitration board shall be selected, composed of two representatives of the party of the first part, and two representatives of the party of the second part, with a fifth and disinterested party to be mutually selected by the four men so appointed. Upon the demand of either party to this contract, the question at issue shall be submitted to this board of arbitration and its decision shall be final and binding on both parties. Provided, that local union laws not affecting wages, hours and working conditions or the interests of the party of the first part, and the laws of the International Typographical Union not in conflict with the provisions of this contract shall not be subject to arbitration. Provided further, that should arbitration be resorted to in any matter in dispute, the rules laid down in the Code of Procedure of the Arbitration

Agreement of 1917-1922 between the American Newspaper Publishers Association and the International-Typographical Union shall govern the arbitration proceedings.

Section 9. It is hereby mutually agreed that if during the term of this contract a new arbitration agreement is concluded between the International Typographical Union and the American Newspaper Publishers Association, a local agreement thereunder will be immediately signed by the parties to this contract, and the provisions of this new arbitration agreement shall take the place of the provisions of Section 8.

SCALE OF WAGES.

Section 10. The following scale of wages shall remain in force during the life of this contract, unless changed in accordance with the provisions of Section 3.

Section 11. All journeymen members of the Union (except operators of type or line-setting or other keyboard machines) shall receive one dollar and twelve cents ($1.12) per hour for day work; and one dollar and eighteen cents ($1.18) per hour for night work.

Section 12. A minimum of eight hours, exclusive of lunch time, shall constitute a day's or night's work, except for machine operators, and six days or nights shall constitute a week's work; and where an employe, either time or machine man works more than eight (8) hours in any one day or night, or more than six (6) days or nights in any one week he shall receive time and one-half of the scale herein provided for the additional time. Where substitutes are not available over a period of 30 days time, men may be required thereafter to work more than 6 days a week at single price until the Union provides competent substitutes.

Section 13. Operators of type or line setting or other keyboard machines shall be paid on the piece basis, standard measurement, minimum thirteen ems pica per line, at the following rates:

Five and one-half point, per one thousand ems, twelve (12) cents for day work; and twelve and one-half (12½) cents for night work.

Six point, per one thousand ems, thirteen (13) cents for day work; and thirteen and one-half (13½) cents for night work.

Seven point, per one thousand ems, fifteen and one-half (15½) cents for day work; and sixteen (16) cents for night work.

Eight point, per one thousand ems, sixteen and one-half (16½) cents for day work; and seventeen and one-half (17½) cents for night work.

Faces larger than eight point shall be set on time at the operator's average.

Section 14. When type is set on slugs larger than the face of the type measurement shall be according to the face and not the slug, and the publisher shall be given the benefit of the extra space between the lines. Where the slug is two points or more over the face, the operator shall be entitled to one-half the extra space.

Section 15. A minimum of six and one-half (6½) hours, exclusive of lunch time, shall constitute a day's or night's work for machine operators working on a piece basis, and when an employe works more than eight (8) hours in any one day or night, he shall receive time and one-half of the scale herein provided.

Section 16. The day scale shall be paid for all shifts beginning after 7 a. m. and ending before 7 p. m. The night scale shall be paid for all shifts beginning after 1

p. m. and ending before 6 a. m., except that a shift starting between 12 o'clock midnight and 7 a. m. shall be paid one dollar ($1.00) in addition to the night scale.

TYPE MEASUREMENT.

Section 17. Straight leader work, border work, race results and entries, run-in programs, matter set in caps, bold face, and matter indented on one or both ends, etc., shall be paid for at the rate of price and one-half. Provided, that where parallel rule is used, double price shall prevail, or the work shall be done on time machines at option of office.

Section 17a. Matter containing two or more justifications shall be paid for at the rate of double price.

Section 17b. Where proper names, whether or not followed by titles or numerals, measuring ten lines or more, and whether separated by paragraph or not, appear in running order in copy, price and one-half shall prevail.

Section 17c. When copy files are made up for piece operators they become the property of that division of the chapel, and all hand-outs of whatever nature, excepting ring corrections, matter of greater width than single column, feature matter or matter of intricate nature impossible to set without changing of machine, are prohibited; provided, this shall not prevent foreman or copy-cutters from advancing "rush" matter.

Section 17d. Foreign languages, and dialects, shall be paid for at double price.

Section 17e. Where operators are required to transpose names and titles, or similar transpositions, double price shall prevail.

General Provisions.

Machine Operators.

Section 18. The standard of proficiency for an operator of a type setting machine or device covered by the stipulations of this contract shall be not less than five thousand five hundred (5,500) ems per hour, on type not larger than nonpareil.

Section 19. In judging the competency of an operator on a machine or in establishing an average, the test shall be on the run of the hook, and time lost through no fault of the operator shall be averaged at the rate of amount set. The usual rule of price and one-half and double price matter shall be observed.

Section 20. An operator who is paid at his average speed shall, upon demand of either the operator or the publisher, and without jeopardy to his situation, establish a new average. Such average shall be based upon the amount of type set working off the hook during the last six days out of fifteen days. An average thus established shall govern until a new average is established at the request of either the operator or the publisher.

Section 21. An operator employed other than on straight machine composition in any department of the composing room shall receive pay at his established average.

Section 22. All time lost on account of stoppage of machines, current, power or other causes, shall be paid at the operator's average; provided, that where the entire plant is down, the time or floor scale shall apply.

Section 23. All copy that is bad, or otherwise objectionable, shall be set at the operator's average; quality of copy shall be decided by the chapel chairman and foreman.

Section 24. Rings shall be paid for at the rate of two lines for one.

The following constitute rings: Changes from copy, all transpositions, the failure of letters to drop, or where letters sprinkle or come double, not the fault of the operator, and changes in proper names. The office may designate an office ring man and he shall be required to handle all rings on his established average.

Section 25. The office shall have style sheets posted and keep same corrected with all additions thereto in a conspicuous place, and said style sheets shall govern all composition.

General Provisions.

All Employes.

Section 26. Journeymen receiving more than the scale, when forced to work overtime, shall be paid price and one-half of the regular scale rate.

Section 27. A journeyman called (unless notified the previous day) to work before the first posted starting time or at an hour earlier than his regular time for showing up shall receive one dollar ($1.00) in addition to regular rate of pay for work performed, which shall not be less than a minimum day.

Section 28. A journeyman put to work after posted starting time on either day or night shift shall receive pay for a full day, and shall not to make up the hours, be kept later than the regular closing time.

Section 29. A journeyman going to work at regular starting time shall be entitled to a full day's work, but should he quit, or be excused from duty at his own request, or be discharged for cause, before the regular closing time,

he shall be paid only for the time employed. In no case shall an employe be laid off before regular closing time unless discharged for cause.

Section 30. If an employe is recalled to work within two (2) hours after time is up, he shall be paid for intervening time at the rate applicable for that time as if no stoppage had occurred, but if the recall occurs after more than two hours have elapsed, Section 29 or Section 32, as the case may be, shall govern.

Section 31. Double-headers: All journeymen working two shifts on Saturday and Saturday night on afternoon papers getting out a Sunday morning edition, shall be paid the regular night scale for the second shift plus 50 cents.

Section 32. Journeymen called to work on an extra on Sunday shall receive one dollar ($1.00) in addition to regular rate of pay for a minimum day. Employes found in the building and put to work shall not be entitled to the one dollar ($1.00).

Section 33. The time for lunch shall be fixed by the foreman at such time as to least interfere with the work of the office, provided, that no employe shall be required to work longer than five (5) hours without lunch. The lunch time shall not be less than thirty (30) minutes and not more than one (1) hour, and in no case shall lunch time be charged against the office.

Section 34. Regular starting time shall be posted before the first closing time each day for each shift of the following day.

35.

Section 36. All wages shall be paid in full at the end of each week. The office may designate the close of a financial week, and the regular pay day shall be not more than thirty-six (36) hours thereafter.

36.

Section 37. In all cases where journeymen are laid off permanently, or discharged for cause, before regular pay day, they shall be entitled to and receive within twenty-four (24) hours whatever sum may be due them.

37.

Section 38. In case of news matter or advertisements of local business houses either in the shape of type, linotype matter, or stereotype matrices, being borrowed or exchanged between newspapers or other offices in the City of San Antonio, not owned or controlled by the same person or company, or mats of local ads set in other offices, through lack of time or inability to procure help, the composition of the same shall be reproduced within thirty (30) days as near like the original as the material in the office can practically be utilized, provided, men are available to do the work without overtime. This, however, shall not be construed to cover the advertising of foreign or outside advertisers having no retail stores in San Antonio who furnish their own plates or matrices, nor shall it include comic section or matrix feature pages used in the paper.

38.

Section 39. The union reserves the right to refuse to execute all work received from or destined to unfair printing offices or publications. Struck work is hereby defined to be work for any person or concern other than the party of the first part, against whom a strike has been duly authorized by the International Typographical Union, or any printing office declared unfair by the Typographical Union.

39.

Section 40. The foreman shall have the right to call his force or any part of it to work at different hours, as the exigencies of the business may require; provided, that (except in emergency) employes shall be allowed twelve

hours rest between shifts. He may in emergency shift men temporarily from day work to night work or from night work to day work, and when the emergency has passed they shall immediately be transferred back. Such shifts shall not affect the priority of the employes for a day or night situation.

40.

Section 41. It is agreed that if any terms or customs affecting wages, hours or working conditions better or different than those given in this agreement, or any concessions whatever are allowed by the Union to any other San Antonio daily newspaper during the life of this contract, those said better or different terms, customs or concessions shall be allowed immediately to the publisher party to this contract if he so desires.

41.

Section 42. All type set under this contract is to be the property of the office for such use as it may desire

38.

except as provided in Section 39.

42.

Section 43. Wages of apprentices shall be fixed by the publisher for the first and second year. For the third year apprentices shall receive 42½% of the journeyman time scale. For the fourth year 55% and for the fifth year 75% of said time scale.

43.

Section 44. All rules governing working conditions shall apply to apprentices as covered in this agreement the same as for journeymen.

44.

Section 45. One apprentice may be employed on the floor for each five journeymen situations or majority fraction thereof; provided, that not more than three appren-

tices may be employed on the floor at any one time, nor shall an apprentice be placed at the head of any department.

45.

Section 46. A joint apprentice committee composed of two representatives named by the San Antonio daily newspapers, and two representatives of San Antonio Typographical Union No. 172, shall be formed to examine and determine all matters relating to apprentices. They shall act to enforce the conditions of the agreement covering apprentices, and shall have full power and authority at any time during the term of apprenticeship to terminate the apprenticeship of an apprentice who does not possess proper qualifications or show aptitude for the work. This committee shall meet jointly at the call of the chairman of each committee, at such time and place as may be determined, and equal representation of both parties shall constitute a quorum.

46.

Section 47. Apprentices shall be physically fit, shall have a common school education and shall be able to read manuscript intelligently.

47.

Section 48. The foreman and chairman of the chapel shall see that apprentices are afforded every opportunity to perfect themselves in all branches of the craft, and shall require heads of departments to see that they receive full instructions, as follows:

48.

Section 49. First year: Apprentice shall be employed at proofing galleys, straightening leads and slugs, holding copy and such other work as he may be assigned by the foreman, provided that at least three months of the first year shall be spent in holding copy.

48.

Section 49a. Second year: Apprentice shall be employed at least 50 per cent of his time in the ad room. This period to be devoted to teaching him the case, type faces, distribution, and all the rudiments of the trade.

48.

Section 49b. Third year: Apprentice shall be employed at least 75 per cent of his time in the ad room and in the head alley. This period to be devoted to teaching him all the intricate handiwork of the craft, including proper display of ads, use of borders and ornaments, marking out of type matter for machines, relation of type faces and their correct uses, etc. Beginning with the third year apprentices shall be enrolled in and complete the International Typographical Union Course of Lessons in Printing before being admitted as journeymen members of the union.

48.

Section 49c. Fourth year: Apprentice shall be employed full time on ad room and makeup work. This period to be devoted to mastering all the detail work in ad composition and a thorough training on forms, the latter to include placing of ads, makeup of news and editorial pages, classifications and makeup of liner pages, lockup of forms, for stereotype room, etc.

48.

Section 49d. Fifth year: During this year apprentice shall receive a total of at least six (6) months instruction on any and all typesetting and typecasting devices in use in the office where he is employed; at least three (3) months in the proof room in reading proof and holding copy and the remainder of the time in the laying out of advertisements and general composing room work, so that he may master every phase of ad construction. Provided, that no apprentice shall work on machines at piece work

at less than the journeymen's piece work scale. It shall be the duty of the chairman to report any violation of apprentice provisions.

49.

Section 50. In pursuance of the foregoing agreement reached by the Express Publishing Company, publishers of the San Antonio Express and San Antonio Evening News and the Light Publishing Company, publishers of the San Antonio Light and San Antonio Typographical Union No. 172, a subordinate of the International Typographical Union of North America, we, the undersigned officers of said organizations acting for and on behalf of same, hereby accept the foregoing preamble and scale of wages as herein arranged, the same to govern the parties hereto during the life of this contract, and affix our signatures and seals of our organizations this 22nd day of November, A. D., 1928.

Light Publishing Company

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Publisher.

Express Publishing Company

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President.

San Antonio Typographical Union No. 172

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President.

.....

Secretary.

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San Antonio, Texas
December 29, 1932.

San Antonio Typographical Union No. 172, through their authorized members of the Arbitration Board hereby agree to accept a ten per cent reduction in the rate of pay designated in the present contract dated November 22, 1928, between the Light Publishing Company, Express Publishing Company and San Antonio Typographical Union. This agreement to become effective as of January 1, 1933, and is to continue until the expiration of the contract. All other terms and conditions of the contract to remain unchanged.

For SAN ANTONIO PUBLISHERS
Frank G. Huntress
Wm. McIntosh
For SAN ANTONIO TYPOGRAPHICAL UNION NO. 172
Geo. V. Schmitz
C. W. Satterfield
Arbitration Board.

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July 30, 1935.

Meeting of the Arbitration Board, following members were present:

Mr. Frank G. Huntress, Mr. Wm. McIntosh, representing the Publishers and Mr. C. B. Rogers, Mr. A. T. Harris, representing the Union.

Mr. Huntress was elected temporary Chairman of the Board.

Mr. Harris was elected Secretary of the Board.

Contract as of 1928 read by Secretary.

Moved by Publishers, seconded by representatives of San Antonio Typographical Union No. 172:

We the undersigned members of the Arbitration Board do hereby agree that the present existing contract between

Express Publishing Company and San Antonio Light Publishing Company and the San Antonio Typographical Union No. 172 be renewed for a five year period beginning first day of August 1935 to and including the thirty-first day of July 1940.

It is further agreed that the wages, rate of pay and hours shall be as prevailing at present which is ten per cent less than originally stated in contract as of 1928.

It is further agreed that either party to this contract may upon ten days notice during the first year of this contract open the question of hours and wages, procedure to be as in Section 3 of contract.

The motion as written was accepted by unanimous vote of Board.

Minutes approved,

Frank G. Huntress
Wm. McIntosh
C. B. Rogers
A. T. Harris
Members of Arbitration Board

- - - - - - -

July 30th, 1935.

Moved by Publishers, seconded by representatives of the San Antonio Typographical Union No. 172:

We the undersigned members of the Arbitration Board do hereby agree that the present existing contract between Express Publishing Company and San Antonio Light Publishing Company and the San Antonio Typographical Union No. 172 be renewed for a five year period beginning first day of August 1935 to and including the thirty-first day of July 1940.

It is further agreed that the wages, rate of pay and hours shall be as prevailing at present which is ten per cent less than originally stated in contract as of 1928.

It is further agreed that either party to this contract may upon ten days notice during the first year of this contract open the question of hours and wages, procedure to be as in Section 3 of contract.

EXPRESS PUBLISHING COMPANY
By Frank G. Huntress President.
LIGHT PUBLISHING COMPANY
By Wm. McIntosh Publisher.
SAN ANTONIO TYPOGRAPHICAL UNION NO. 172
By C. B. Rogers
By A. T. Harris

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San Antonio, Texas.
July 7, 1937.

This agreement made and entered into this seventh day of July, 1937, by and between the Express Publishing Company, the Light Publishing Company and the San Antonio Typographical Union No. 172, that the wage-scale shall be increased to the following:

All journeymen members of the Union (except operators of type or line-setting or other keyboard machines) shall receive One Dollar and twelve cents ($1.12) per hour for day work; and One Dollar and eighteen cents ($1.18) per hour for night work.

Operators of type or line setting machines shall be paid:

Five and one-half point, per one thousand ems, twelve (12) cents for day work; and twelve and one-half (12½) cents for night work.

Six point, per one thousand ems, thirteen (13) cents for day work; and thirteen and one-half (13½) cents for night work.

Seven point, per one thousand ems, fifteen and one-half (15½) cents for day work; and sixteen (16) cents for night work.

Eight point, per one thousand ems, sixteen and one-half (16½) cents for day work; and seventeen and one-half (17½) cents for night work.

Faces larger than eight point shall be set on time at the operator's average.

This agreement to become effective as of August 1st, 1937, and is to continue until the expiration of the contract. All other terms and conditions to be a part of the contract and to remain unchanged.

EXPRESS PUBLISHING COMPANY
Frank G. Huntress President.

LIGHT PUBLISHING COMPANY
Wm. McIntosh Publisher.

SAN ANTONIO TYPOGRAPHICAL UNION NO. 172
Paul E. V. Muret, President
J. L. Gilbert